

## 46 Am. Jur. 2d Judges § 242

American Jurisprudence, Second Edition | February 2022 Update

### Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

### XII. Special, Substitute, or Pro Tem Judges

#### C. Rights, Powers, and Duties

## § 242. Rights, powers, and duties of substitute judge, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  25(1)

### A.L.R. Library

[Power of Successor or Substituted Judge, in Civil Case, to Render Decision or Enter Judgment on Testimony Heard by Predecessor](#), 84 A.L.R.5th 399

[Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor](#), 51 A.L.R.5th 747

A pro tem judge possesses all of the judicial powers, jurisdiction, and authority of a regularly elected and qualified judge of the court to which the pro tem judge is appointed or assigned.<sup>1</sup>

A special or substitute judge generally has all the power and is charged with all the duties and responsibilities of the regular judge.<sup>2</sup> However, while a properly assigned special judge has all the powers and responsibilities of a regular judge of the court, those powers and responsibilities are always secondary to those of the regular judge and can come into play only when the regular judge is unable to hear the case.<sup>3</sup> A special judge is said in some states to be a judge de facto.<sup>4</sup>

If a specific judge is assigned to preside in a specific case, that assignment must be withdrawn before any other judge may preside.<sup>5</sup> A judge selected following grant of a motion for change of judge was required to preside over the action after assuming

jurisdiction, and thus a temporary judge appointed by the selected judge lacked jurisdiction in the matter.<sup>6</sup> A judge pro tempore, though, was not precluded from appointing an ad hoc judge to preside in the judge pro tempore's absence.<sup>7</sup>

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 Mosk v. Superior Court, 25 Cal. 3d 474, 159 Cal. Rptr. 494, 601 P.2d 1030 (1979) (state supreme court composed of all assigned judges pro tempore); State ex rel. Juvenile Dept. of Marion County v. Arevalo, 117 Or. App. 505, 844 P.2d 928 (1992).
- 2 Collins v. Johnston, 237 U.S. 502, 35 S. Ct. 649, 59 L. Ed. 1071 (1915); Amos v. Superior Court In and For Los Angeles County, 182 Cal. App. 2d 343, 6 Cal. Rptr. 252 (2d Dist. 1960); State ex rel. La Jesse v. Meisinger, 258 Minn. 297, 103 N.W.2d 864 (1960); National Box Co. v. Bradley, 171 Miss. 15, 154 So. 724 (1934); State v. Kositzky, 38 N.D. 616, 166 N.W. 534 (1918); Mangone v. State, 156 S.W.3d 137 (Tex. App. Fort Worth 2005), petition for discretionary review refused, (June 15, 2005).
- 3 Cox v. Braden, 266 S.W.3d 792 (Ky. 2008).
- 4 State ex rel. McGaughey v. Grayston, 349 Mo. 700, 163 S.W.2d 335 (1942).  
As to the rights and powers of de facto judges, see § 230.  
As to judge's powers while on temporary assignment in federal court, see Am. Jur. 2d, Federal Courts § 33.
- 5 In re Republic Parking System, Inc., 60 S.W.3d 877 (Tex. App. Houston 14th Dist. 2001).
- 6 Smith v. Lake County, 807 N.E.2d 53 (Ind. Ct. App. 2004).
- 7 State v. Strahan, 916 So. 2d 209 (La. Ct. App. 1st Cir. 2005).

---

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.